



DEPARTMENT OF THE ARMY
HEADQUARTERS, 2ND INFANTRY DIVISION
UNIT #15041
APO AP 96258-5041

REPLY TO
ATTENTION OF:

EAID-CG

27 APR 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Letter #36, Limitation on Exercise of Uniform Code of Military Justice (UCMJ) Authority

1. References:

- a. Manual for Courts-Martial, 2005.
- b. US/Republic of Korea (ROK) Status of Forces Agreement.
- c. Eighth US Army Supplement 1 to AR 27-10, Military Justice.
- d. Eighth US Army Policy Letter # 22, Withdrawal of Authority in Fatality Cases.

2. This policy supersedes 2ID Policy Letter #36 (21 July 2006) and any and all other 2ID policy letters on this subject.

3. Policy.

- a. Withholding of Authority to Commanding General (CG) Level.

(1) By Rank. I withhold from subordinate commanders the authority to dispose of misconduct committed by Officers, Sergeants Major, First Sergeants, and Master Sergeants. Pursuant to this reservation of authority, I direct my subordinate commanders, when misconduct by Officers, Sergeants Major, First Sergeants, or Master Sergeants is alleged, to ensure a thorough inquiry is completed, documented, and forwarded through the Staff Judge Advocate to me with chain of command recommendations as to disposition. I will then determine which cases I will handle personally.

(2) By Alleged Offense. I withhold from subordinate commanders the authority to dispose of cases involving the following offenses alleged to have been committed by Soldiers subject to my General Court-Martial Convening Authority, to include offenses (such as curfew or off-limits violations, drunk and disorderly conduct, underage drinking) committed in conjunction with these offenses:

- (a) Any fatality caused by alleged acts of a Soldier in the ROK;

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(b) Any case when a Soldier is subject to prosecution by the ROK for allegedly committing an offense of the following types:

- (1) Assault;
- (2) Sexual assault, rape, indecent assault, indecent acts, or indecent exposure;
- (3) Waste, spoilage, damage, or destruction to real or personal property.

b. Withholding of Authority to Brigade-Level Commander. The authority to dispose of misconduct committed by Sergeants First Class is withheld to the brigade-level commander, subject to the withholding requirements in para. 2.a. above (such authority includes the ability of the brigade-level commander to return a specific case to a subordinate commander). Pursuant to this reservation of authority, I direct subordinate commanders to ensure a thorough inquiry is completed, documented, and forwarded through the Staff Judge Advocate with chain of command recommendations as to disposition to the appropriate brigade-level commander.

c. Withholding of Authority to Battalion-Level Commander. The authority to dispose of cases involving the following acts of misconduct is withheld to the battalion-level commander, subject to the withholding requirements in paras. 2.a. and b. above. Note: The battalion-level commander may permit any subordinate commander to dispose of any or all of the cases below if he deems that such subordinate commander will exercise appropriate judgment. This permission will be granted in writing and will specify the authority granted to the subordinate commander.

- (1) Assault;
- (2) Sexual assault, sexual harassment, and fraternization;
- (3) Alcohol or drug related offenses;
- (4) Absence without leave (AWOL) in excess of 3 days.

4. Procedure.

a. In cases where the ROK has primary jurisdiction under the SOFA, final action will not be taken until all SOFA requirements have been accomplished.

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b. Leaders at all levels are expected and required by law to provide their honest and independent recommendation on how misconduct should be addressed. Nothing in this policy should be interpreted to indicate that allegations must be disposed of in a particular manner; that predetermined types or amounts of punishment are appropriate; or that adverse action is required in all cases or any type of case.

c. A subordinate commander may request that a specific case be returned to that commander for appropriate action. Each such request will be considered and the decision whether to return the action will be made by the appropriate commander or me on a case-by-case basis.

5. This policy is effective immediately and applies to any pending or future case. It will remain in effect until formally rescinded.

6. Questions regarding this policy should be directed to the 2ID Chief of Military Justice, DSN 730-1908.


JAMES A. COGGIN
Major General, USA
Commanding

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